



AGENDA REPORT

Meeting Date: June 3, 2008
Item Number: F-9
To: Honorable Mayor and Members of the City Council
From: City Attorney
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS ADOPTING A GREEN BUILDING ORDINANCE AND AMENDING TITLE 10 OF THE BEVERLY HILLS MUNICIPAL CODE
Attachments: 1. Ordinance

RECOMMENDATION

It is recommended that the proposed ordinance be adopted.

INTRODUCTION

The proposed ordinance amends the City's Zoning Code (Title 10) to establish a Green Building Program and establishes new building standards for certain commercial, mixed-use and multi-family housing projects.

DISCUSSION

At the City Council meeting of May 20, 2008, the City Council conducted a first reading of this ordinance.

FISCAL IMPACT

No fiscal impact is expected as program cost will be offset by increased project valuations associated with imposed Green Building elements.

A handwritten signature in black ink, appearing to be "L. Wiener", is written over a horizontal line.

Laurence S. Wiener, City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
ADOPTING A GREEN BUILDING ORDINANCE AND
AMENDING TITLE 10 OF THE BEVERLY HILLS
MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY
ORDAINS AS FOLLOWS:

Section 1. A new Article 46 entitled “Green Building Standards” is hereby added to
Chapter 3 (“Zoning”) of Title 10 (“Planning and Zoning”) to read as follows:

“Article 46. Green Building Standards

10-3-4600: Purpose.

The purpose of this Article is to enhance public health and welfare and assure that further multi-family residential, commercial and mixed-use development is consistent with the City’s desire to create a more sustainable community by incorporating green building measures into the design, construction and maintenance of buildings. The green building provisions referenced in this Article are designed to achieve the following goals:

- A. Encourage resource conservation.
- B. Reduce waste generated by construction projects.
- C. Increase energy efficiency in buildings.
- D. Provide durable buildings that are efficient and economical to own and operate.
- E. Enhance the health, welfare and productivity of residents, workers, and visitors to the City.

10-3-4601. Definitions.

For the purposes of this Article, certain words and terms are defined as follows:

“Applicant” means any individual, firm, limited liability company, association, partnership, corporation, or any other entity that applies to the City for the applicable permits to undertake any construction or Renovation project within the City.

“Commissioning Authority” means the party retained by an Applicant pursuant to Section 10-3-4607.

“Covered Project” means the construction of, or addition to, any multi-family residential, commercial, or mixed-use building, or the Renovation of any existing multi-family residential, commercial, or mixed use building if the cost of the Renovation exceeds fifty percent (50%) of the replacement cost of the building, as determined pursuant to Section 10-3-4100.

“Green Building Compliance Official” means the Director of Planning and Community Development or his or her designee.

“Green Building Project Checklist” means the rating system established as provided in Section 10-3-4604.

“Non-Covered Project” means any project that is exempt from the provisions of this Article as set forth in Section 10-3-4603.

“Pre-Permitting Documentation” means documentation submitted as required by Section 10-3-4605.

“Renovation” means any change or modification to an existing building or structure.

10-3-4602: General Provisions-Applicability.

A. Neither this Article, nor any of its related green building resolutions, shall affect in any manner the permissible use of property, density/intensity of development, design and improvement standards, or other applicable standards or requirements of this Code, all of which shall be operative and remain in full force and effect without limitation.

B. When the provisions of this Article conflict with state law, state law shall govern.

C. The provisions of this Article shall be applicable to City projects unless the City Council determines that application of these provisions to any particular project is not in the best interest of the public or City.

10-3-4603: Non-Covered Projects.

The following projects shall be exempt from the provisions of this Article:

A. The voluntary repair or renovation of any structure for the sole purpose of performing seismic upgrades.

B. Any project that solely includes plumbing, electrical or mechanical work.

C. Installation of a roof covering on any existing building.

D. The repair of a building, if the building official determines that the repair is necessary for safety reasons and the repair does not enlarge the building.

10-3-4604: Standards for Compliance.

A. All Covered Projects shall demonstrate compliance with the rating system and minimum point requirements established by separate resolution of the City Council, as amended from time to time. This shall be known as the Beverly Hills Green Building/Sustainability Checklist or the Green Building Project Checklist.

B. Applicants are encouraged to register Covered Projects with the U.S. Green Building Counsel. LEED™ certification through the U.S. Green Building Council is not required by this Article.

C. Applicants for Non-Covered Projects are encouraged to use their best effort to incorporate as many green building measures as feasible from the Beverly Hills Green Building Project Checklist.

10-3-4605: Submission of Pre-Permitting Documentation.

A. Pre-Permitting Documentation. Concurrent with the application for a planning approval or building permit approval for any Covered Project, the Applicant shall submit documentation indicating the measures used to achieve compliance with the Green Building Project Checklist. This Pre-Permitting Documentation shall include:

1. The applicable Green Building Project Checklist; and
2. The applicable green building worksheet with an analysis of each credit claimed; and
3. Any other documentation that may be necessary to show compliance with this Article or as requested by the Green Building Compliance Official.

B. Meeting. After submission of the documentation required by this section, but prior to the issuance of a building permit, the Green Building Compliance Official may arrange a meeting with the Applicant to discuss the proposed measures, as needed.

10-3-4606: Review of the Pre-Permitting Documentation.

A. Approval of Documentation. The Green Building Compliance Official shall approve the Pre-Permitting Documentation if the Official determines that the project will conform to the applicable rating set forth in the Green Building Project Checklist.

B. Non-approval or Incomplete Documentation. If the Green Building Compliance Official determines that the Pre-Permitting Documentation fails to demonstrate that the Covered Project will meet the required rating or the documentation is incomplete, Official shall:

1. Return the Pre-Permitting Documentation to the Applicant marked “denied” including a statement of reasons for the denial; or

2. Return the Pre-Permitting Documentation to the Applicant marked “incomplete” with an indication of additional information or project modifications that may be required to complete the Pre-Permitting Documentation.

Neither a building permit, nor a grading permit, shall be issued until the Pre-Permitting Documentation has been approved.

C. Re-Submission. If the Pre-Permitting Documentation is returned to the Applicant, the Applicant may re-submit the Pre-Permitting Documentation with such modifications or additional information as may be required.

10-3-4607: Compliance.

A. LEED Certified Professional. The Applicant shall retain a LEED certified professional to assist with the submission of Pre-Permitting Documentation and the monitoring and verifying of compliance with the Green Building Project Checklist and other approved Pre-Permitting Documentation required by Section 10-3-4605. The LEED certified professional shall submit evidence of compliance with the approved documentation to the Green Building Compliance Official during design and construction as required by the Green Building Compliance Official.

B. Verification. The City shall verify that the green building measures and provisions indicated in the Pre-Permitting Documentation are being implemented through inspections of the project during construction and through review of appropriate documents such as purchase receipts or photographic documentation provided by the Applicant and acceptable to the Green Building Compliance Official. If, as a result of any inspection, the Green Building Compliance Official determines that the Covered Project does not comply with the Pre-Permitting Documentation, a stop-work order may be issued. At the discretion of the Green Building Compliance Official such a stop-work order may apply to the portion of the project impacted by noncompliance or to the entire project. The stop-work order shall remain in effect until the Green Building Compliance Official determines that the project will be brought into compliance with this Article.

C. Substitution of Credits. During construction of the project, the Green Building Compliance Official may approve the substitution of approved credits with other credits in the Green Building Project Checklist. Substitution shall occur only at the request of the Applicant and after submittal of revised Pre-Permitting Documentation satisfactory to the Green Building Compliance Official.

D. Commissioning Authority. The Applicant shall retain a third party agent commonly known as a “Commissioning Authority” to ensure that the systems are designed, installed, functionally tested, and capable of being operated and maintained to perform in conformity with the approved Pre-Permitting Documentation for a Covered Project. Pursuant to Section 10-3-4614, the Green Building Compliance Official may adopt qualifications for the Commissioning Authority as part of the rules and regulations for implementation of this Article.

10-3-4608: Final Determination of Compliance.

A. Prior to any final building permit approval and/or issuance of a final certificate of occupancy, the Green Building Compliance Official shall review the documentation submitted by the Applicant, and determine whether the Applicant has complied with the requirements of this Article. If the Green Building Compliance Official determines the Applicant has met the requirements of this Article, the Green Building Compliance Official shall so certify. No building permit shall be finalized, nor shall a permanent certificate of occupancy be issued, for a Covered Project until the Green Building Compliance Official has issued a certification of compliance with this Article.

B. As required by the regulations adopted by the Green Building Compliance Official pursuant to Section 10-3-4614, the Commissioning Authority shall submit a report of building operation in accordance with the approved Pre-Permitting Documentation to the Green Building Compliance Official for verification of compliance with this Article and to ensure that the building systems are designed, installed, functionally tested, and capable of being operated and maintained to perform in conformity with the approved Pre-Permitting Documentation for the Covered Project.

C. If the Green Building Compliance Official determines that the Covered Project has not met the requirements of this Article, the Green Building Compliance Official may withhold issuance of final building permit approval or a certificate of occupancy or may make one of the following determinations:

1. Good Faith Effort to Comply. Upon request by an Applicant, the Green Building Compliance Official may determine that the Applicant has made a good faith effort to comply with this Article and authorize issuance of final building permit approval or a permanent certificate of occupancy. The Green Building Compliance Official may determine that the Applicant has made a good faith effort to comply with this Article if:

a. The cost of good faith compliance with this Article exceeds twenty-five percent (25%) of the total construction cost; or

b. The green building materials and technologies on the Green Building Project Checklist are no longer available or not yet commercially available. In making this determination, the Green Building Compliance Official shall consider the availability of markets for materials to be recycled, the availability of green building materials and technologies, and the documented efforts of the Applicant to comply with this Article.

The determination of good faith compliance with any one aspect of the Green Building Projects Checklist shall not relieve the Applicant of the obligation to fully comply with all other aspects of the Checklist.

2. Noncompliance. Although the Applicant has not met the requirements of this Article, the Applicant will undertake additional green building measures as described below to mitigate the Applicant's failure to comply with this Article. Once the Applicant has undertaken such additional measures, the Green Building Compliance Official may certify that the Covered Project has met the requirements of this Article.

a. Mitigation. If the Green Building Compliance Official determines that the Applicant has not complied with this Article pursuant to this subsection C.2, the Green Building Compliance Official may require further green building measures to be employed in the operation and maintenance of the Covered Project to mitigate the Applicant's failure to comply fully with this Article. Such further measures may include, but are not limited to, landscaping the Covered Project to decrease water and energy consumption, use of energy efficient fixtures, including the use of energy efficient light bulbs, and education of the building occupants and owners regarding on-going energy and resource saving techniques.

D. LEED Certification: For Covered Projects that have voluntarily registered with the U.S. Green Building Council with the intent to certify the building at the "Certified" level or above, the Green Building Compliance Official may reduce the scope of the City's compliance review. Depending on the timing of certification, the verification of compliance with this Article required may be reduced or eliminated. However, in no event shall a final certificate of occupancy be issued until after the U.S. Green Building Council issues its formal ruling that each attempted credit is either anticipated or achieved or verification of compliance with this Article has been provided to the Green Building Compliance Official.

10-3-4609: Hardship or Infeasibility Exemption.

A. Exemption. If an Applicant for a Covered Project believes that circumstances exist that make it a hardship or infeasible to meet the requirements of this Article, he or she may apply for an exemption as set forth below. In applying for an exemption, the burden is on the Applicant to show hardship or infeasibility.

B. Application. If an Applicant for a Covered Project believes that such circumstances exist, the Applicant may apply for an exemption at the time that the Applicant submits the Pre-Permitting Documentation required by Section 10-3-4605. The Applicant shall indicate in the Pre-Permitting Documentation the maximum number of credits he or she believes is practical or feasible for the Covered Project and the circumstances that he or she believes make it a hardship or infeasible to comply fully with this Article. Such circumstances may include, but are not limited to, availability of markets for materials to be recycled, availability of green building materials and technologies, and compatibility of green building requirements with existing building standards.

C. Meeting with Green Building Compliance Official. The Green Building Compliance Official shall review the information supplied by the Applicant, may require additional information from the Applicant, and may meet with the Applicant to discuss the request for exemption.

D. Granting of Exemption. If the Green Building Compliance Official determines that it is a hardship or infeasible for the Applicant to fully meet the requirements of this Article based on the information provided, the Green Building Compliance Official shall determine the maximum feasible number of credits reasonably achievable for the Covered Project and shall indicate this number on the Pre-Permitting Documentation submitted by the Applicant. The Green Building Compliance Official shall return a copy of the Pre-Permitting Documentation to the Applicant marked "Approved with Exemption" and shall notify the Building Division that

the Pre-Permitting Documentation has been approved. If an exemption is granted, the Applicant shall be required to comply with this Article in all other respects and shall be required to achieve in accordance with this Article, the number of points determined to be achievable by the Green Building Compliance Official.

E. Denial of Exemption. If the Green Building Compliance Official determines that it is not a hardship or infeasible for the Applicant to meet the requirements of this Article, the Official shall notify the Applicant in writing. The Applicant shall resubmit the Pre-Permitting Documentation in full compliance with this Article and if the resubmitted documentation does not comply this Article, the Green Building Compliance Official shall reject the Pre-Permitting Documentation in accordance with Section 10-3-4606.

10-3-4610: Affordable Housing Exemption.

The Green Building Compliance Official may waive some or all of the requirements of this Article if an affordable housing project Applicant demonstrates that full compliance with the provisions of this Article would frustrate the ability to provide affordable housing units. Any waiver pursuant to this paragraph shall not be deemed to be a construction incentive for purpose of Section 10-3-1526.6 of this Municipal Code.

10-3-4611: Appeal.

Pursuant to the provisions set forth in Title 1 of this Code, any aggrieved Applicant or person may appeal to the City Council the determination of the Green Building Compliance Official regarding: (i) the granting or denial of an exemption pursuant to Section 10-3-4609; (ii) compliance with this Article pursuant to Section 10-3-4604; or (iii) the type or scope of mitigation measures required pursuant to Section 10-3-4608 in the event of noncompliance.

10-3-4612: Review of Beverly Hills Green Building Rating System.

A. The Planning and Community Development Department and/or the Beverly Hills Planning Commission may review the Green Building Project Checklist from time to time to ensure the requirements are practical, feasible and are updated to be compliant with green building materials and technologies as such become available in the marketplace.

B. Prior to the adoption of any resolution amending the Green Building Project Checklist, the Planning Commission shall review such amendment and provide a recommendation to the City Council, unless the City Council waives this requirement.

10-3-4613: Recordation of Covenant.

The property owner shall record and sign a covenant in a form satisfactory to the city attorney that requires the green building systems implemented as set forth in the Green Building Project Checklist to be maintained for the life of the project or any portion thereof. The covenant shall require that the owner include provisions for such maintenance either by the owner or a third party in any lease, agreement, covenants, conditions and restrictions, or similar document. For example, if low-emissions carpet were installed pursuant to the Green Building Project

Checklist, the replacement carpet shall also be of a type that complies with the Green Building Project Checklist.

10-3-4614: Authority to Adopt Rules and Regulations.

Consistent with the provisions of this Article, the Green Building Compliance Official shall have authority to adopt rules and regulations to implement this Article.

10-3-4615: Enforcement.

In addition to any other remedy available, violation of any provision of this Article due to the Applicant's failure to build or maintain the Covered Project in accordance with the Covered Project plans, including the Pre-Permitting Documentation and the conditions of approval in the applicable permit, may be punishable as provided for in Chapter 3 of Title 1.

B. Where the Applicant has violated any provision of this Article due to the Applicant's failure to build or maintain the Covered Project in accordance with the project's plans, including the Pre-Permitting Documentation and the conditions of approval in the applicable permit, the Green Building Compliance official may require mitigation as set forth in Section 10-3-4608.

C. These remedies are cumulative, and the choice of one by the City shall not preclude pursuing others whether or not listed herein."

Section 2. The provisions of this ordinance shall not apply to the construction of, addition to, or renovation of multi-family residential, commercial, or mixed use buildings for which either a development application has been deemed complete by the Planning and Community Development Department or a building permit has been issued before the sixty-first day after the effective date of this ordinance.

Section 3. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code; shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 4. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

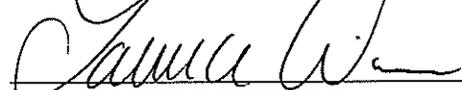
Adopted:

BARRY BRUCKER
Mayor of the City of Beverly Hills

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager


VINCENT P. BERTONI, AICP
Director of Community Development